

**CHAD C. SPRAKER**  
Assistant U.S. Attorney  
U.S. Attorney's Office  
901 Front Street, Suite 1100  
Helena, MT 59626  
Phone: (406) 457-5270  
FAX: (406) 457-5130  
Email: chad.spraker@usdoj.gov

**MARK STEGER SMITH**  
Assistant U.S. Attorney  
U.S. Attorney's Office  
2601 Second Ave. North, Suite 3200  
Billings, MT 59101  
Phone: (406) 247- 4667  
FAX: (406) 657- 6058  
Email Address:  
mark.smith3@usdoj.gov

**ATTORNEYS FOR DEFENDANT**

**David K. W. Wilson, Jr.**  
**MORRISON, SHERWOOD, WILSON &  
DEOLA**  
401 North Last Chance Gulch  
Helena, MT 59601  
(406) 442-3261  
(406) 443-7294 (Fax)  
kwilson@mswdlaw.com

**ATTORNEY FOR PLAINTIFF**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA, HELENA DIVISION**

**MONTANA ENVIRONMENTAL  
INFORMATION CENTER,**

**Plaintiff,**

**v.**

**UNITED STATES DEPARTMENT  
OF ENERGY,**

**Defendant.**

**Cause No.: CV 20-29-H-SEH**

**JOINT  
DISCOVERY PLAN**

Pursuant to this Court's Order of May 12, 2020 (Doc. 8) the parties in this proceeding have met and conferred to discuss the matters set forth in the Court's

Order and hereby set forth a proposed Joint Discovery Plan. Montana Environmental Information Center (“MEIC”) filed its Complaint against Defendant United States Department of Energy (“DOE”) on April 9, 2020, alleging violations of the Freedom of Information Act, 5 U.S.C. § 552 et seq. (the “FOIA”). In particular, MEIC alleges that DOE failed to timely respond and produce records responsive to MEIC’s FOIA request. DOE filed its answer on May 12, 2020.

This joint discovery plan proposes a rolling production of FOIA documents estimated to be complete or or before September 30, 2020, with a period of 90-days thereafter for the parties to attempt to resolve any remaining issues in the litigation.<sup>1</sup> The deadlines proposed below are accordingly largely to take effect if the rolling production and negotiation period does not result in resolution of all issues herein.

**1. Amendments to Pleadings:**

July 30, 2020.

**2. Rolling Production of Documents**

DOE shall produce “rolling” monthly productions of records responsive to MEIC’s FOIA request. The first production occurred on June 5, 2020. Unless good cause exists, rolling monthly productions shall continue until DOE has

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<sup>1</sup> This district employed a similar case management plan in *Buffalo Field Campaign v. United States Department of Agriculture et al.*, CV 18-31-M-DLC. (D. Mont.) to resolve a FOIA complaint.

produced all non-exempt records to MEIC resulting from a reasonably adequate search for responsive records. At this time, the parties estimate that monthly productions will continue until September 30, 2020. The parties will work cooperatively in the event additional time is required to complete the production phase of the case.

**3. Negotiations to resolve any FOIA exemptions and attorney's fees**

After DOE has finished producing records responsive to MEIC's FOIA request, the parties shall engage in good faith to resolve any disputes concerning records withheld, either in part or in full, by DOE pursuant to the FOIA's nine disclosure exemptions. The parties shall also discuss resolving MEIC's claim to reasonable attorneys' fees and costs incurred in bringing this litigation. The parties agree that this negotiation period should last no more than 90 days, unless there is mutually agreed good cause to expand it.

Additional deadlines should the parties' fail to reach a resolution:

**4. Expert Disclosures:**

Neither party anticipates retaining or needing experts in this matter.

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**5. Close of Discovery<sup>2</sup>:**

April 2, 2021

**6. Certification of Administrative Record:**

Copies of the FOIA requests, agency responses to the FOIA requests, administrative FOIA appeal documents, and any additional FOIA documents released after the filing of this case, will be filed and bates numbered consecutively. The parties will seek to agree upon the contents of this record. DOE will file this record with the Court no later than one week after the close of discovery (which is proposed as April 2, 2021) making the joint record due on or before **April 9, 2021**. In addition to the joint record the Federal agency defendants will file any supplemental *Vaughn* Indexes on or before April 2, 2021.

**7. Motions:**

The parties propose a staggered briefing schedule on cross motions for summary judgment. All motions other than motions for summary judgment shall be fully briefed on or before **June 25, 2021**. The proposed summary judgment schedule is as follows:

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<sup>2</sup> Discovery is not favored in FOIA cases. *Hardy v. U.S. Dep't of Def.*, No. CV-99-523-TUC-FRZ, 2001 WL 34354945, at \*4 (D. Ariz. Aug. 27, 2001). Most FOIA cases not resolved by settlement are decided by the district court on summary judgment. *See Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 836 F.3d 987, 989 (9th Cir. 2016).

a. DOE will file an opening brief in support of a motion for summary judgment, statement of undisputed facts and any declarations in support by May 14, 2021.

b. MEIC will file a combined response brief and brief in support of plaintiffs' cross motion for summary judgment, statement of undisputed facts, statement of genuine issues and any declarations in support by June 4, 2021.

c. DOE's combined response to MEIC's summary judgment and reply brief in support of DOE's motion for summary judgment, and statement of genuine issues will be due by June 25, 2021.

d. MEIC's final reply brief in support of plaintiffs' cross motion for summary judgment shall be filed by July 9, 2021.

**8. Attorney's Conference:**

August 27, 2021

**9. Filing of Proposed Pretrial Order<sup>3</sup>:**

September 10, 2021

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<sup>3</sup> "[I]f there are genuine issues of material fact in a FOIA case, the district court should proceed to a bench trial or adversary hearing." *Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 836 F.3d 987, 990 (9th Cir. 2016).

DATED this 19th day of June 2020.

KURT ALME  
United States Attorney

/s/ Chad C. Spraker  
Assistant U.S. Attorney  
*Attorney for Defendant*

MORRISON SHERWOOD WILSON & DEOLA

/s/ David K. W. Wilson, Jr.  
*Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of June, 2020, a copy of the foregoing document was served on the following person by the following means.

1, 2 CM/ECF  
       Hand Delivery  
       U.S. Mail  
       Overnight Delivery Service  
       Fax  
       E-Mail

1. Clerk of Court

2. David K.W. Wilson, Jr.  
MORRISON, SHERWOOD, WILSON,  
& DEOLA, PLLP  
401 N. Last Chance Gulch  
P.O. Box 557  
Helena, Montana 59624  
(406) 442-3261 – Phone  
(406) 443-7294 – fax  
[kwilson@mswdlaw.com](mailto:kwilson@mswdlaw.com)  
Attorneys for Plaintiff

/s/ Chad C. Spraker  
Assistant U.S. Attorney  
Attorney for Defendant